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DEC 15 1944
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 709

A. M. ANDERSON, Receiver of the National Bank of Kentucky, of Louisville, *Petitioner,*

vs.

GENERAL AMERICAN LIFE INSURANCE COMPANY, *Respondent.*

BRIEF OF THE COMPTROLLER OF THE CURRENCY AS AMICUS CURIAE.

JOHN F. ANDERSON,
Attorney for Preston Delano,
Comptroller of the Currency.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Comes now Preston Delano, Comptroller of the Currency of the United States, and by leave of Court first had and obtained, respectfully submits his brief as amicus curiae, in support of the petition for writs of certiorari filed by A. M. Anderson, Receiver of the National Bank of Kentucky, of Louisville, Kentucky in the above entitled cause.

I.

Foreword.

"Citation of the Opinions Below", "Statement of Jurisdiction", "Specification of Errors", "Summary Statement of the facts", "Questions Presented" and the "Rea-

sons relied on for allowance of the writs" are covered in the petition filed by the Receiver. Reference is here made to the same to avoid repetition.

II.

Reasons urged by the Comptroller of the Currency in Support of the Receiver's Petition for Writs of Certiorari.

It appears from the Petition that: Rogers Caldwell, of Nashville, Tennessee, dominated and controlled a number of important life insurance companies and banks. Among these were the Bank of Tennessee, the Associated Life Insurance Company, the Inter-Southern Life Insurance Company, and Missouri State Life Insurance Company. The respondent, General American Life Insurance Company, is a successor, after this suit was brought, of the Missouri State Life Insurance Company. Caldwell was heavily involved, and he with nearly all of his corporate creatures collapsed in October, 1930.

On August 21, 1930 Caldwell, acting for Associated Life Company, negotiated a loan of $500,000.00 from the National Bank of Kentucky. The proceeds of the loan were utilized to purchase two certificates of deposit, $250,000.00 each, in the name of Caldwell & Company as a part of the transaction. Caldwell & Company guaranteed in writing that the certificates of deposit would not be cashed except in reduction of the Associated Life loan. Notwithstanding this guarantee, Caldwell immediately transferred the certificates of deposit to the Missouri State Life Insurance Company.

The executive committee of Missouri State Life acted for the insurance company in purchasing the certificates. Rogers Caldwell, the transferor of the certificates, was the dominant member of the executive committee. The Circuit Court of Appeals found that Rogers Caldwell controlled the officers and executive committee of Missouri State Life.

> "The officers and executive committee members * * * appear to have been complaisant in submission to his desires in the conduct of the corporate business;" 141 F. (2d) 898, 903, R. 1, page 171.

The Court of Appeals further found that the Board of Directors in its "official functioning * * * was far from free and untrammeled to the point of independence". 141 F. (2d) 903, R. 1, page 171.

Missouri State Life requested the bank to re-issue new certificates to it in lieu of the certificates issued to Caldwell & Company. The bank promptly called Caldwell's attention to this fact and on behalf of Missouri State Life he agreed that the Missouri State Life would likewise not cash the new certificates except and unless the note was paid. In reliance upon this agreement of Caldwell, without which Missouri State's request would have been refused, the new certificates were issued in the name of Missouri State Life.

A short time thereafter National Bank of Kentucky failed and Missouri State Life filed its claim with the Receiver demanding that the certificates be paid notwithstanding the fact that the Associated Life loan still remained unpaid.

The case has been twice before the Circuit Court of Appeals for the Sixth Circuit. At the first trial the District Court had directed a verdict on the opening statement of defense made by counsel for the Receiver and entered a judgment for the full amount of the claim with 6% interest. The Court of Appeals for the Sixth Circuit reversed this decision, remanded the case for a new trial, stating its legal conclusions in a long opinion, to the effect that the defense tendered was, subject to proof, a good defense; and in addition directed that in no event was interest allowable. *Anderson* v. *Missouri Life*, 69 F. (2d) 794.

Upon retrial the District Court again entered judgment for the plaintiff against the Receiver upon the sole ground

that there was a failure on the part of the Receiver to prove that the agreement of Rogers Caldwell was brought to the attention of officials of the Missouri State Life Insurance Company, other than Caldwell.

Upon the second appeal the Court of Appeals reversed its former holdings in two respects. It held that it was necessary to prove that the collateral agreement made by Caldwell was specifically brought to the attention of the other officials of Missouri State Life Insurance Company. It also reversed its previous holding on the question of interest. *Anderson* v. *General American Life Insurance Co.*, 141 F. (2d) 898.

The decision of the Sixth Circuit seems to be in direct conflict with the decision of the Second Circuit in the Harriman Bank case—*Munroe* v. *Harriman, et al.*, 85 F. (2d) 493, cert. den. 299 U. S. 601—where it was held that a national bank, if it claims by virtue of a sole actor's act, must also accept the burden of the sole actor's knowledge of the defect in the title. If a national bank is so bound it would seem that a life insurance or other corporate customer of the bank should be equally bound by the sole actor's dealing with it.

The two cases in the two circuits have parallel facts. In each:

1) There was a dominance of a corporation, one a large national bank, the other a large insurance company;

2) Securities were transferred from the dominating individual to the corporation which he controlled;

3) It was to the personal interest of the transferor to conceal from the corporation certain information he had as to the restrictions which apply to the securities;

4) The transferor controlled the officials and the committees of the two corporations;

5) The transferor used this control to cause the corporation to take over the securities;

6) Payment was made to the transferor even before approval was had by the proper committee;

7) The subsequent approval by the committee was merely perfunctory;

8) The matter before the court was only one of many questionable transactions engaged in between the dominating individual and the controlling corporation;

9) The officials were found to be complaisant in submission to the dominating influence in the conduct of the corporate business.

Nevertheless, in the Harriman case, involving a national bank, it was held by the Second Circuit Court of Appeals that the corporation was charged with knowledge and that the controlled personnel were to be ignored; and in the present case, involving an insurance company, it was held by the Sixth Circuit Court of Appeals that the corporation could not be so charged with knowledge. It is submitted that the two decisions are inconsistent.

A ruling decision on the effect of the so-called "sole actor's knowledge and commitment" would be in the public interest and of importance to this office in the administration of the affairs of insolvent National banks and in the supervision of going National banks. If an insolvent National bank, as was decided in the Harriman case, is burdened with the knowledge and commitment of a sole actor for the bank it would seem that the rule should apply equally in favor of the bank and its depositors where the sole actor is acting for a corporate customer of the bank.

III.

Conclusion.

The Comptroller of the Currency, therefore, earnestly urges this Honorable Court to grant the petition for writs of certiorari filed by the Receiver in the instant case.

Respectfully submitted,

JOHN F. ANDERSON,
Attorney for Preston Delano,
Comptroller of the Currency.